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MAY 1 4 2004

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

PETITION OF NPCR, INC.,	)	CASE NO. 2003-00143
D/B/A NEXTEL PARTNERS FOR	)	
DESIGNATION AS AN ELIGIBLE	)	
TELECOMMUNICATIONS CARRIER IN	)	
THE COMMONWEALTH OF KENTUCKY	)	

NPCR, INC. d/b/a NEXTEL PARTNERS'
NOTICE OF FILING

Pursuant to the order entered in this case on April 14, 2004, the petitioner, NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), hereby gives notice of pre-filing the attached rebuttal testimony of Scott Peabody and Don Wood, with exhibits.

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By Keith Moorman
ATTORNEYS FOR NPCR, INC. d/b/a
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by U.S. mail on this the 14th day of May, 2004, to the following:

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MAY 14 2004

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
PETITION OF NPCR, INC. d/b/a NEXTEL PARTNERS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY	)	**CASE NO. 2003-00143**

REBUTTAL TESTIMONY OF DON J. WOOD

FOR NPCR, INC. d/b/a NEXTEL PARTNERS

MAY 14, 2004

I. Background and Purpose of Testimony

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Don J. Wood. I am a principal in the firm of Wood & Wood, an economic and financial consulting firm. My business address is 30000 Mill Creek Avenue, Suite 395, Alpharetta, Georgia 30022.

Q: ARE YOU THE SAME DON WOOD WHO PROVIDED DIRECT TESTIMONY ON BEHALF OF NPCR, INC. D/B/A NEXTEL PARTNERS ON APRIL 29, 2004?

A: Yes.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: I have been asked by NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners" or "NPCR") to respond to the testimony of Mr. Steven E. Watkins on behalf of the Independent Telephone Group ("ITG" of "the rural ILECs").

My testimony is divided into two sections. Section 1 describes the questions that are before the Commission in this proceeding and the applicable federal requirements that are to be used to answer those questions. Section 2 addresses the question of whether the designation of Nextel Partners as an ETC in the area served by rural ILECs is in the public interest.

Section 1: The Specific and Narrow Questions before the Commission

Q: WHAT QUESTIONS ARE BEFORE THE COMMISSION IN THIS PROCEEDING?

A: For the rural ILEC areas identified in Nextel Partners' Petition, there are two relevant questions: (1) Has Nextel Partners committed to offer and advertise the nine supported services throughout the proposed service area?, and (2) Is the designation of Nextel Partners as an ETC in the public interest?

Q: ARE THERE ANY ADDITIONAL QUESTIONS BEFORE THE COMMISSION IN THIS CASE?

A: No. While Mr. Watkins argues otherwise, this proceeding is not an opportunity to second guess Congressional policy as set forth in the 1996 Act or the FCC's interpretation and implementation of that policy as set forth in the federal rules.

As an initial matter, Mr. Watkins appears to believe that the standard for ETC designations in areas served by rural ILECs has somehow been changed by the issuance of the FCC's *Virginia Cellular Order*[1] or by the release of the *Joint Board Recommendation*[2] to the FCC. In contrast to the impression given by Mr. Watkins in his testimony, the *Virginia Cellular Order* does not represent a reversal of past FCC policy regarding how ETC designations should be made. To the contrary, the Virginia Cellular Order represents a diligent application of principles previously identified and applied by the FCC. As I will describe later in my testimony, Nextel Partners meets each of the FCC's criteria. While Mr. Watkins may wish otherwise, the *Joint Board Recommendation* is just that: a recommendation. In that report, the Joint Board takes on several controversial issues and defers others. The recommendation also includes several separate statements and dissenting views, including strong dissents on some of the issues addressed by Mr. Watkins. The FCC is yet to receive comment on the recommendation and it is of course unknown whether some, all, or none of the recommendation will ultimately be adopted. It is not necessary, and would not be appropriate, for this Commission to speculate on what the outcome of the FCC's investigation will be.

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[1] *Memorandum and Order*, CC Docket No. 96-45, Released January 22, 2004.

[2] *Recommended Decision* by the Federal-State Joint Board on Universal Service, Released February 27, 2004.

Mr. Watkins presents a litany of well worn arguments in his attempt to sway the Commission from designating Nextel Partners as an ETC. Without exception, these arguments (1) are wholly unsupported by either facts or sound public policy, and (2) have been rejected by the state, the FCC or both. The willingness Mr. Watkins to repeat these arguments does not make them credible, nor does it change the fact that he fails to present any valid public policy or factual reason why this Commission should not approve Nextel Partners' request for designation.

It Is Neither Necessary Nor Appropriate To Broaden The Scope Of This Proceeding As Suggested By Mr. Watkins

Q: HAVE THE QUESTIONS YOU OUTLINED ABOVE BEEN THE FOCUS OF THE PROCEEDINGS BEFORE OTHER STATE REGULATORS?

A: Yes. These questions have been, as they must be, the focus of the review made by the regulators in each case (state regulatory bodies where they had jurisdiction, the FCC where the state regulator did not have jurisdiction).

In direct contrast, the rural ILECs in these proceedings have sought to significantly broaden the scope of review and have attempted to put competition on trial. While such attempts have rarely been successful, they have often become distractions that unnecessarily consume the time and resources of all involved. Unfortunately, the rural ILECs in this case have undertaken such a strategy.

Put directly, the purpose of this proceeding is *not*, as Mr. Watkins suggests, to answer the question *Is the introduction of competition for basic telecommunications services in rural areas in the public interest?* That question has been answered and the policy direction has been set by both Congress and the FCC. The questions to be addressed here concern the facts of Nextel Partners' Petition.

Mr. Watkins asks the Commission to weigh the benefits and costs of permitting competitive entry into rural areas and the benefits and costs of granting ETC status to more than one carrier in such an area. These questions are not before the Commission in this proceeding. To the contrary, the relevant questions here are specific to Nextel Partners: *Will Nextel Partners offer services that provide benefits to consumers?*, and *Is there some fact or issue that is specific to Nextel Partners, or to the service areas within which it seeks an ETC designation in Kentucky, that would outweigh those benefits?* Based on the facts associated with this petition, the Commission should be able to answer "yes" and "no," respectively, to these questions.

As an overarching principle, it is the interests of the public – the consumers of telecommunications services – that must be considered. The interests of individual carriers, or categories of carriers, is a secondary consideration if it is to be considered at all. Mr. Watkins endorses the idea of "competitive neutrality" (p. 10) at a conceptual level but goes on to insist on a series of restrictions and requirements that are anything but competitively neutral.

The FCC and Fifth Circuit Court have been clear that the purpose of the federal universal service mechanism is to protect rural consumers of telecommunications services; its purpose is not to protect incumbent LECs: "The Act does *not* guarantee all local telephone service providers a sufficient return on investment; quite the contrary, it is intended to introduce competition into the market. Competition necessarily brings the risk that some telephone service providers will be unable to compete. The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*. So long as there is sufficient and competitively neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well" (emphasis in original).[3]

Mr. Watkins now seeks to re-litigate the FCC's recent decisions regarding the operation of the federal universal service mechanism in rural areas, and is specifically asking the Commission to ignore certain portions – but not others – of the FCC's *Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45*, Released May 23, 2001 ("*Fourteenth Report and Order*") and to engage in a process of second guessing both Congress and the FCC regarding (1) the benefits of competitive entry, and (2) the most effective means of ensuring that consumers in rural areas have access to basic telecommunications services at reasonable rates. Setting aside the question of whether his claims have merit, this is simply not the correct forum for such a debate.

The Role Of The FCC's Virginia Cellular Order And The Joint Board Recommendation

Q: IS IT YOUR TESTIMONY THAT THIS COMMISSION MUST IGNORE THE FCC'S *VIRGINIA CELLULAR ORDER* AND THE *JOINT BOARD RECOMMENDATION* WHEN REACHING A DECISION IN THIS CASE?

A: No, but these documents (one FCC order and one recommendation to the FCC by the Federal-State Joint Board) must be considered accurately and in the proper context.

Q: PLEASE DESCRIBE THE FCC'S CONCLUSIONS AS SET FORTH IN THE *VIRGINIA CELLULAR ORDER*.

A: Mr. Watkins (p. 5) paraphrases the FCC's statements at paragraph 4 of the *Virginia Cellular Order*: "in determining whether designation of a competitive ETC in a rural

[3] *Alenco Communications, Inc. v. FCC*, 201 F.3d at 620, cited in *Fourteenth Report and Order*, paragraph 27.

telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame." He then characterizes the FCC's statement as one that goes above and beyond the public interest standard previously applied by the FCC, and extends this logic to a suggestion that the FCC is seeking to discourage ETC designations in rural ILEC study areas. I disagree in both respects; the criteria applied by the FCC in the *Virginia Cellular Order* are not new, and any theory that the FCC intended to somehow "telegraph" a suggestion to the states to deny requests for ETC designations ignores the simple fact that the FCC *approved* Virginia Cellular's request for ETC designation.

While I will discuss each of the topics in greater detail later in my testimony, the following is a summary of how the facts surrounding Nextel Partners' petition apply to the FCC criteria cited by Mr. Watkins:

The benefits of competitive choice. The FCC has previously described these benefits, including the opportunity for end users to have competitive alternatives, new services, and lower prices. The FCC has also concluded that an important benefit of competitive entry is the creation of incentives for the rural ILEC to improve efficiency and reduce its network and operating costs. The operation of Nextel Partners as an ETC can be expected to have this effect in the areas for which it seeks designation.

The impact of multiple designations on the universal service fund. ITG's reliance on this issue as a reason for rejecting Nextel Partners' petition is misplaced for two reasons. First, it ignores the fact that the rural wireline ILECs continue to receive the vast majority of high cost universal service funds and that the size of the fund has increased significantly because the rural ILECs requested (and were granted) a higher level of funding from the FCC. The additional funding received by rural ILECs through the "modified embedded cost" funding mechanism far outweighs any impact on the fund caused by CETCs generally or wireless CETCs specifically. Second, ITG's analysis is limited by a short run view. As I will explain, the best means of managing the size of the fund over the long term is to designate one or more CETCs in these areas. The long run impact on the federal fund of designating Nextel Partners as an ETC may be a reduction, not an increase, in the size of the fund.

The unique advantages and disadvantages of the competitor's service offering. Nextel Partners is proposing to offer a wide range of service plans as an ETC. The best judges of whether these offerings provide benefits to end users are the customers themselves: if they do not perceive a benefit, they will not subscribe to the Nextel Partners service and Nextel Partners will not receive any universal service funding. It should be noted that in its *Virginia Cellular Order*, the FCC concluded (paragraph 29) that the extended coverage, mobility, and larger calling areas offered by Virginia Cellular represented a benefit to customers that was a factor in its analysis.

Any commitments made regarding quality of telephone service provided by competing providers. Like pricing and other components of customer benefit, service quality is best judged by end user customers: if customers do not perceive that Nextel

Partners' offering is of sufficient quality, they will not subscribe to the service and Nextel Partners will not receive any universal service funding. It should be noted that Nextel Partners has committed to comply with the CTIA *Consumer Code for Wireless Service* in order to ensure consumer protection. This is the same commitment made by Virginia Cellular and relied upon by the FCC.[4]

The competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Nextel Partners has committed to use universal service funding received only for the intended purposes and assures the Commission that it will use these funds to increase the quality and coverage area of its services. The FCC has explicitly recognized that its is unlikely that a CETC will be able to offer ubiquitous service prior to receiving USF: "to require a carrier to actually provide the supported services before it is designated as ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications services."[5] Instead, the FCC has focused on a CETC's ability and willingness to respond to reasonable requests for service.[6] Nextel Partners is making a commitment to respond to such reasonable requests.

In summary, Nextel Partners' petition is fully consistent with the FCC's application of the public interest standard in the *Virginia Cellular Order*. I will provide a detailed discussion of these and other related issues in Section 2 of my testimony.

Q: HOW DID THE FCC TREAT THE *JOINT BOARD RECOMMENDATION* WHEN REACHING ITS DECISION REGARDING VIRGINIA CELLULAR'S REQUEST FOR ETC DESIGNATION?

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[4] *Virginia Cellular Order* paragraph 46.
[5] *Virginia Cellular Order*, paragraph 17, citing *Declaratory Ruling*, 15 FCC Rcd at 15173-74.
[6] *Virginia Cellular Order*, paragraph 15.

A: The FCC concluded that its investigation into the USF rules, including its consideration of the Joint Board recommendation, might change the rules to be applied *in the future* in a proceeding such as this one, but that until that change occurs the existing rules should be applied and no attempt to prejudge the outcome of the FCC's investigation should be made. For example, the FCC states "we note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding."[7] The FCC also noted that the outcome of its investigation could "modify the public interest analysis used to designate ETCs in both rural and non-rural carrier study areas,"[8] and finally: "we note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could materially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanism."[9] As was the case when the FCC released the *Virginia Cellular Order*, the FCC's pending rulemaking proceeding has not been concluded and no rules have been changed. The proper course in this proceeding is for the Commission to apply, as the FCC did in the *Virginia Cellular Order,* the rules as they currently exist. The FCC repeatedly pointed out, the rules may (or may not) change in the future, but they have not yet done so. The

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[7] *Id.*, paragraph 12.
[8] *Id.*, paragraph 27.
[9] *Id.*, paragraph 31.

FCC did not prejudge the conclusion of its pending rulemaking, and I would urge this Commission to likewise not prejudge that outcome.

What remains, therefore, is the task before the Commission in this case: to apply the facts of Nextel Partners' request to the existing rules for ETC designation.

Mr. Watkins Offers No Relevant Facts To Support His Position That Nextel Partners' Petition For Designation As An ETC Should Not Be Granted

Q: DOES MR. WATKINS PROVIDE ANY SPECIFIC FACTS RELATED TO ANY OF THE RURAL ILEC SERVICE AREAS THAT WOULD JUSTIFY A REJECTION OF NEXTEL PARTNERS' PETITION?

A: No. Mr. Watkins emphasizes that this proceeding should be a "rigorous review" of "specific facts," then he devotes the bulk of his testimony to providing a catalogue of general concerns and speculation. As I will explain in detail in Section 2 of my testimony, the facts that are provided by Mr. Watkins are either not relevant to the question at hand or fail to support the arguments that he makes. In the end, the rural ILECs offer no facts that could form the basis of a decision that it is not in the public interest to designate Nextel Partners as an ETC in these areas.

Q: MR. WATKINS ARGUES FOR A COST-BENEFIT ANALYSIS. DO YOU AGREE WITH HIS REASONING?

A: I have no problem with the application of a cost-benefit analysis in this proceeding as long as both the benefits and costs considered are (1) accurately identified and (2) specific to this proceeding. Nextel Partners has presented facts that are specific to its operation in the Kentucky service areas in question. In direct contrast, Mr. Watkins describes costs, such as the support of multiple networks,[10] that *might* occur as a

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[10] The funding of more than one network over the short run may be necessary in order to minimize the size of the fund over the long term. If wireless carriers have lower network costs than wireline carriers, then such a scenario exists in this case: it will be necessary to temporarily

consequence of the designation of a CETC (and then fails to consider the question over any time horizon beyond the short run), and speculates about rule changes that *might* occur at the conclusion of the FCC's pending investigation and suggests that the Commission somehow apply those unknown rules in this proceeding. Mr. Watkins' focus here is at 30,000 feet when it should be at ground level: any costs to be considered in this proceeding are specific to the details of Nextel Partners' petition or specific to the characteristics of the rural ILEC service areas that are the subject of the petition, and the existing rules are to be applied (as the FCC did in the *Virginia Cellular Order*).

Q: DOES MR. WATKINS CONSIDER THE BENEFITS OF ADDITIONAL ETC DESIGNATION?

A: No. While he devotes a considerable amount of his testimony to the potential costs of designating an additional ETC, Mr. Watkins devotes very little time to a description of the benefits. He fails to note that benefits would be created by investments that would bring mobile service to currently unserved areas and expand the areas within which customers can use their mobile phones. Furthermore, he ignores the benefits of new choices, lower prices, and higher quality.

The benefit of customer choice applies not only to the introduction of new offerings to existing customers but extends to offerings to customers not previously served. The benefit of lower prices applies to reductions in the price of existing offerings, but it is also necessary to consider the bundle of services being provided and the price that the customer would have to pay the ILEC for that same bundle of services. Additionally, increases in service quality benefit all customers. As the FCC's has previously

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fund both a wireline and wireless network in the short run until the more efficient/less costly wireless network can take over and represent the only funded network. This would yield a significantly lower fund size over the long run.

concluded, the entry of an additional ETC into a rural area can be expected to create the following benefits: "provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers." Furthermore, the FCC has found "no merit" in the arguments that the designation of an additional ETC in a rural area will reduce investment incentives, increase prices, or reduce the service quality of the incumbent LEC.

Mr. Watkins fails to consider one of the main benefits of additional ETC designation: competitive responses from other service providers. This is unfortunate, because his short run view causes him to understate the public benefit of designating a CETC. By utilizing only a static, short-term framework, he understates what is arguably the primary benefit of competitive market forces: the creation of incentives for efficient operation by both incumbent carriers and new entrants.

Section 2: Granting Nextel Partners' Petition is in the Public Interest

Granting Nextel Partners' Petition For ETC Designation Will Result In Benefits To End User Customers

Q: WILL NEXTEL PARTNERS OFFER SERVICES THAT PROVIDE BENEFITS TO CONSUMERS?

A: Yes. Nextel Partners will provide the residents and businesses in the specified areas with important options. End users will be able to choose the technology – wireline or wireless – that best meets their individual needs. End users will also be able to choose among rate plans that will allow them to more closely match the service that they receive (and pay for) with their calling patterns and frequency. Last, but certainly not least, end users will have greater access to the personal and public safety benefits of wireless service.

The ITG Witness Offers No Facts That Are Specific To Nextel Partners Or The Rural Areas In Which It Seeks Designation That Demonstrate That The Requested Designation Would Not Be In The Public Interest

Q: IS THERE SOME FACT OR ISSUE THAT IS SPECIFIC TO NEXTEL PARTNERS, OR THE SERVICE AREAS WITHIN WHICH IT SEEKS ETC DESIGNATION IN KENTUCKY, THAT WOULD OUTWEIGH THOSE BENEFITS?

A: No. Nextel Partners' desire to serve – and its commitment to do so – fully complies with the service obligations set forth in the Act and is consistent with that of other carriers that have been designated as an ETC in areas served by rural ILECs. While the service area for which Nextel Partners seeks designation in rural ILEC areas differs from more densely populated areas of the state, these differences were fully contemplated by the FCC in the *Fourteenth Report and Order.* The question is <u>not</u> "*Is the area served by the rural ILECs different from the area served by non-rural ILECs?*" but rather "*Is the area served by the rural ILECs at issue in this proceeding demonstrably different from the service area of other rural ILECs, and different in a way that was unanticipated by the FCC in the* Fourteenth Report and Order?" There is nothing in the record to suggest that this is the case.

The Services Offered By Nextel Partners Are Fully Compliant With All FCC Requirements

Q: MR. WATKINS CLAIMS THAT THE SERVICES OFFERED BY NEXTEL PARTNERS DO NOT QUALIFY AS "UNIVERSAL SERVICE." DO YOU AGREE?

A: No. First of all, Mr. Watkins is apparently somewhat confused about this issue. There is, of course, no such thing as a "universal service" or even a "universal service offering." Carriers offer various services to the public in hopes that the objective of universal service (widespread subscribership) is met. According to §54.101, an ETC must offer the nine supported service elements in its services in order to qualify for support. This requirement is a minimum standard; it in no way suggests that the service provided can consist *only* of those nine service elements. ITG members can and do provide a variety of services to end user customers. These services are not somehow divided into one group classified as "universal services" and another that is not; if the ILEC offers the nine supported service elements, it is eligible for support for that line.

Mr. Watkins goes on to state (p. 10) because "Nextel Partners does not have a Universal Service offering comparable to the unlimited local calling plans offered by the ITG member companies" it is not offering "universal service." This is nonsense for several reasons. First, as explained above, there is no such thing as a "universal service offering." Each of the services offered by Nextel Partners included the required nine service elements. Second, the issue of unlimited local calling has been addressed on several occasions at the federal level and the FCC has not established any minimum level of local usage that must be provided on a flat-rated basis. Third, as the Joint Board recently observed, the local calling areas of ILECs and ETC applicants are often different, a fact that should be considered. The value to a customer of a given number of flat-rated calls may vary considerably based on the number of people and places that can be called on a "local basis." Finally, to the extent that Mr. Watkins is suggesting that the ILECs are currently providing some amount of "free" local calling, he is mistaken. In reality, a flat-rated structure for a service offering means that the customer is being required to purchase some bundle of minutes, whether or nor he desires or would use that volume of calling. Minutes of use purchased on a bundled basis are not "free" simply because they are billed as a lump sum rather than as they are actually used. Nextel Partners' array of service offerings permits customers to match what they elect to purchase with their calling needs and volumes. Mr. Watkins offers no explanation as to why it is not in the public interest to permit customers to pay for only what they use.

Consumers Should Decide Whether or Not Nextel Partners' Service Quality and Prices Are

Valuable

Q: DO YOU AGREE WITH MR. WATKINS' ASSERTION THAT A CETC SHOULD BE REQUIRED TO OFFER SERVICES IDENTICAL TO THE ILECS' SERVICES?

A: No. Though the nine supported service elements are required for ETC designation, it is not true that a carrier is required to offer those services and no others. As is the case here, the ILECs have often made the argument that all ETCs must offer "stripped-down" services identical in structure to the ILECs' basic local services. As an initial matter, the FCC rules include no such requirements. ILECs receive support for a line even if the customer chooses to purchase a combination of services and features that go far beyond the nine supported service elements. Mr. Watkins does not explain why a CETC should be disqualified from receiving support for these lines while the ILECs should not.[11]

Additionally, it is not meaningful to compare services straight across-the-board between carriers with fundamentally different rate structures. This is especially true when one of the main causes of the differing rate structures is the different functionality offered by wireless and wireline providers. Wireless carriers provide service and functionality that wireline providers cannot and vice versa; these additional benefits provide additional value to the consumer.[12] For example, one of the main benefits of wireless service is its mobility, another is flat rated long distance service. These and other benefits distinguish wireless from wireline service and highlight the fact that not only is wireless a different services, but that it also requires different pricing.

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[11] There is of course the requirement that an ETC offer Lifeline service to requesting customers, but that is separate from the issue of basic stand alone rates, and is being addressed in the testimony of Nextel Partners' witness Scott Peabody.

[12] It should be noted that though wireless service is becoming comparable to wireline service in terms of voice clarity, data transmission capability and other quality measures, wireline service will never be able to offer the main benefit of wireless service, mobility.

Finally, the issue of rates should be decided by the market, not by the Commission. Because of the way in which the FCC designed the funding mechanism, i.e. the portability of funds, only if the market perceives Nextel Partners' rates as acceptable, will any funding be available. I believe that such a market driven decision was precisely what the FCC intended seeing as it will 1) allow the entry of competitive carriers, 2) allow those carriers to charge rates appropriate for the services they provide, 3) require the ILEC to move toward efficiency in order to compete, and 4) provide the public with myriad benefits of both wireless service and competition in general.

Q: MR. WATKINS SUGGESTS THAT NEXTEL PARTNERS SHOULD BE REQUIRED TO DEMONSTRATE THAT IT WILL ACHIEVE ITS SERVICE QUALITY OBJECTIVES BEFORE THE COMMISSION CAN CONCLUDE THAT NEXTEL PARTNERS' ETC PETITION IS IN THE PUBLIC INTEREST. DO YOU AGREE?

A: No. Mr. Watkins states (pp. 10-11) that Nextel Partners should be required "to comply with all applicable and relevant regulations affecting quality of service and service provisions within Kentucky ... as has each of the ITG members." With respect to quality of service standards, Mr. Watkins' argument suggests adding requirements for ETC designation that the FCC elected not to impose. What the FCC recognized was that the competitive market will create constraints that render the service quality issue moot for the same reason that the affordability issue is moot; not because affordability and service quality aren't important to end user customers, but because they are. Assuming an alternative is available, customers will not subscribe to services if they consider the price too high or the quality too low. If Nextel Partners fails to meet customers' expectations regarding affordability and service quality, it will not receive federal high cost support.

The Joint Board also addressed the issue of service quality standards in its recent recommendation. Of course, there is no way to know which, if any, of these recommendations will ultimately be adopted by the FCC. It is perhaps worthy of note that the Joint Board limited its recommendation to service quality standards that are necessary to ensure that universal goals are met. The Joint Board was clear regarding the narrowness of its recommendation: "our recommendation here, however, is not that competitive ETCs should be required to comply with all of the standards imposed on wireline incumbent LECs as some commenters have proposed. States should not require regulatory parity for parity's sake. Rather, requirements should be imposed on ETCs only to the extent necessary to further universal service goals."[13]

Mr. Watkins' proposal that Nextel Partners should be required "to comply with all applicable and relevant regulations affecting quality of service and service provisions within Kentucky," just as ITG members are, appears to be exactly the kind of "parity for parity's sake" that the Joint Board recommended against. Nextel Partners has made commitments regarding consumer protections, and the marketplace will provide an additional level of discipline. Mr. Watkins has not identified any shortcoming in these constraints and has not identified any specific regulation that he believes is needed to address this shortcoming. Until he does, there is really nothing for the Commission to consider.

The Implication By Mr. Watkins That Nextel Partners Will "Misuse" USF Funds Has No Factual Basis

Q: MR. WATKINS IS CONCERNED THAT NEXTEL PARTNERS WILL MISUSE USF FUNDS. DO YOU SHARE HIS CONCERNS?

A: No. Mr. Watkins states (p. 13) that subsequent to ETC designation Nextel Partners could use USF funding received in the Kentucky rural areas for buildout in "some other areas"

[13] *Joint Board Recommendation*, ¶34.

or might even "distribute (the funds) to shareholders of Nextel Partners as dividends." In actuality Mr. Watkins has ignored all of the checks and balances built into the current system.

As an initial matter, the use of federal support funds by § 254 (e) is for "the provision, maintenance, and upgrading of facilities and services for which the support is intended." To ensure that the use of support funds by any ETC (incumbent or competitor) complies with this requirement, the Universal Service Administration Company ("USAC") has the authority to conduct audits and does so on a regular basis. This Commission also has both the ability and responsibility to ensure that any funds received by Nextel Partners or any other ETC are being used appropriately. The Commission has an ongoing role in ensuring that federal ETCs receive annual certifications which allow them to continue receiving federal USF support. State commissions are required to file annual certifications with the FCC and the Universal Service Administrative Company (USAC) stating that rural incumbent local exchange carriers and/or ETCs service lines in the service areas of rural ILECS are using federal USF support only for the provision, maintenance and upgrading of facilities for which the support is intended. There is no reason to assume that this Commission will not fulfill these duties. Finally, wireless carriers, including Nextel Partners, are licensed by the FCC, which has the authority to investigate the operation of wireless companies and institute punitive measures if it deems them necessary.

These mechanisms clearly demonstrate that Nextel Partners will be held to the kind of accountability that Mr. Watkins suggests. The FCC agrees that the current mechanism is sufficient in this regard:

> We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that that high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services in the areas where it is designated as an ETC. Virginia Cellular will be required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that if Virginia Cellular fails to fulfill the requirements of the statute, our rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.

Mr. Watkins' Claims Regarding A Possible Impact On The Size Of The Federal USF Fund Are Based On A Strictly Short-Run View, Are Disingenuous At Best, And Are Well Beyond The Scope Of This Proceeding

Q: MUCH OF MR. WATKINS' TESTIMONY EXPRESSES VARIOUS CONCERNS REGARDING THE SIZE OF THE FEDERAL UNIVERSAL SERVICE FUND. ARE THESE CONCERNS VALID?

A: No. These concerns are (1) not related to any of the specific characteristics of Nextel Partners' petition or to any rural ILEC service area that is identified in Nextel Partners' petition, (2) are based on a strictly short run view that ignores long terms impacts on the size of the fund, and (3) to the extent they have any merit, this is not the appropriate forum for such a debate.

Growth in the fund was explicitly anticipated and considered by the FCC when developing the rural universal service mechanism. The FCC fully contemplated increases in the size of the fund when the decision was made to permit multiple ETCs. When developing the rural universal support mechanism, the FCC carefully weighed each aspect of the proposed elements, including the impact of that element on the size of the fund. Many elements, including those intended to represent a direct benefit to the rural ILECs, were adopted with full recognition that the fund size would be increased significantly as a result. Other proposed elements were rejected, even though the stated purpose of these proposed elements was to limit the size of the fund. For example, the

FCC rejected a proposal by the Rural Task Force to freeze high-cost loop support upon competitive entry in high-cost areas. After noting that the stated "purpose of this proposal is to prevent excessive fund growth following competitive entry," the FCC concluded that such a provision should not be included, citing both the "limited benefit" of the proposal, its potential for limiting public benefit, and the operation of other elements of the mechanism with the same intended purpose.[14] Still other elements were tailored in a way to limit fund growth. For example, certain rural ILECs requested that the FCC completely remove the indexed cap on the high cost loop fund. The FCC refused, in part because it considers the indexed cap to be "a reasonable means of limiting overall growth of the high-cost loop fund."[15] Finally, the FCC specifically noted that while the current interim mechanism is in place, it would conduct "a comprehensive review of the high-cost support mechanisms for rural and non-rural carriers," and that this review will include issues related to fund growth.[16]

The largest contributors to the size of the fund are the compromise elements that were included by the FCC *for the benefit of rural ILECs*. Mr. Watkins makes a common omission among rural ILECs - he fails to mention is that the size of the high-cost loop fund is in large part a direct function of the FCC's decision to give the rural ILECs an extended transition period in which to improve their efficiency, reduce their costs, and better prepare themselves to operate in a competitive market. These elements of the mechanism, implemented at the request of and for the exclusive benefit of rural ILECs,

[14] *Fourteenth Report and Order*, paragraphs 125-128.
[15] *Id.*, paragraph 46.
[16] *Id.*, paragraph 169.

represent a far greater impact on the size of the fund than any of concerns cited in this case.

For the current interim mechanism, the FCC set aside its consistent (and economically valid) position that universal service funds should be sufficient to permit the recovery of a carrier's forward-looking economic costs, but not necessarily its embedded costs. In fact, the FCC did the rural ILECs one better, by adopting a modified embedded cost mechanism that is projected to increase the size of the high-cost fund by $1.26 billion dollars over the amount that would have been required by the existing embedded cost mechanism.[17] To my knowledge, no estimate of the impact on the fund size caused by the decision to permit rural ILECs to recover embedded, rather than economic, costs has been published.

In economic terms, the decision to permit rural ILECs to recover embedded costs represents a dead weight loss. It is an inefficiency that is being institutionalized into the existing cost structure for the duration of the interim mechanism. Rural ILECs are the sole beneficiaries of this element. Not surprisingly, the FCC has put the rural ILECs on notice that this windfall exists only for the duration of the interim mechanism:

> Although we agree with the Rural Task Force that a distinct rural mechanism is appropriate at this time, we believe that there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles. The Commission previously determined that support based on forward-looking cost is sufficient for the provision of the supported services and sends the correct signals for entry, investment, and innovation. Many commenters representing the interests of rural telephone companies argue that the Rural Task Force's analysis conclusively demonstrates that the forward-

[17] *Id.*, paragraph 28. It should be noted that this estimate was provided by the Joint Board and Rural Task Force, and not by some party opposing the adoption of the modified embedded cost mechanism.

> looking cost mechanism should not be used to determine rural company support and that only an embedded cost mechanism will provide sufficient support for rural carriers. We disagree. While the Rural Task Force demonstrated the inappropriateness of using input values designed for non-rural carriers to determine support for rural carriers, we do not find that its analysis justifies a reversal of the Commission's position with respect to the use of forward-looking costs as a general matter."[18]

The FCC also noted its agreement with the Joint Board that "to the extent that it differs from forward-looking economic cost, embedded cost provides the wrong signals to potential entrants and existing carriers."[19] I agree. More important in the current context, to the extent it differs from forward-looking economic cost, embedded cost inflates the size of the high-cost fund to a level well above that which would otherwise be necessary.

A second element of the interim federal universal service mechanism for rural areas, again included for the sole purpose of benefiting rural ILECs, is the modification of the concept of "portability." The FCC's decisions regarding the portability of these funds in rural areas are responsible for a portion of the increase in fund size.

The rural ILECs' suggestion that the best means of limiting growth of the fund is to deny Nextel Partners' Application for ETC status is disingenuous at best. In the simplest terms, the facts are as follows: (1) rural ILECs asked for and received various protections from the impact of competition as a part of the interim mechanism, (2) these protections cause the size of the high-cost fund to increase, and (3) the rural ILECs are now using the fact that the fund is growing to support an argument that actual competitive entry should be limited. Rural ILECs completely ignore the fact that these assurances of cost recovery

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[18] *Fourteenth Report and Order*, paragraphs 173-174 (footnotes and paragraph numbering omitted).

[19] *Id.*, paragraph 174 and footnote 406.

in rural areas are a gift from the FCC; they would not exist in a competitive marketplace. The transition mechanism adopted by the FCC may be costly in the short term, but it can serve to gradually wean the incumbent rural LECs over the period of time that it is in effect. However, such weaning will only take place if competitors are permitted to enter the market with ETC status.

If the interim universal service mechanism is implemented fully, the long-term result will be the maximum benefit to the consumers of telecommunications services in rural areas and to rural economic development. Rural ILECs can use this transition period, and the "windfall" generated by the guarantee of embedded cost recovery and the receipt of universal funds for customers not currently served, to update their networks, streamline their operations, and prepare for competition. The piecemeal implementation of this policy favored by the rural ILECs would inevitably harm rural consumers. Permitting multiple ETCs to operate in an area prior to incumbent rural LECs being given the time to wean themselves could, the FCC concluded, cause financial distress to the rural ILECs and disruptions in service. Equally important, permitting the guarantee of embedded cost recovery and the receipt of a constant amount of universal funds (regardless of the number of retail customers actually being served), but refusing the certification of multiple ETCs, such as Nextel Partners, gives the rural ILECs no incentive to act during this interim period to increase their efficiency and prepare for the day that they will actually be subject to competitive market forces.

Q: HAS THE FCC RECENTLY ADDRESSED THE ISSUE OF FUND SIZE WHEN GRANTING ETC DESIGNATIONS?

A: Yes. In the *Virginia Cellular Order* and the *Highland Cellular Order*, the FCC explicitly considered the size of the federal high cost fund but focused on a specific question: what impact would the designation at issue have on the size of the fund? In both cases, the FCC approved the requested ETC designation after noting that the impact on the size of the fund - by the CETC applicant before it in the area being requested – would not burden the fund. In each case, the FCC went on to note that the broader issue of fund size was being addressed by the Joint Board and would ultimately then be addressed by the FCC. In other words, the FCC kept the issues clearly divided: facts related to the specific ETC applicant were considered in the case related to the request for designation, and broader policy questions were left for the proceedings that have been established for the purpose of addressing broad policy issues. I believe that this is a reasonable course of action for this Commission as well.

Mr. Watkins' Argument Regarding The Proposed "Primary Line Restriction" Belies A Misunderstanding Of How Such A Mechanism Would Work

Q: DO YOU AGREE WITH MR. WATKINS THAT A PRIMARY LINE RESTRICTION SHOULD NOT BE IMPLEMENTED?

A: Yes, though for different reasons than those offered by Mr. Watkins. I believe that a primary line restriction should not be adopted because it will discourage entry by a potentially more efficient provider.

Mr. Watkins argues (pp. 5-6) for more of a doomsday scenario: if the Joint Board's recommendation to adopt a "primary line" mechanism is adopted, changes in the amount of support available will cause ILECs to be non-viable and no carrier of last resort will be available to end users.

Such a conclusion ignores several relevant facts. First, no primary line restriction has been adopted by the FCC, and it is not clear that the FCC will ultimately decide to take this route. Given the depth of the "primary line" mechanism's shortcomings and the breadth of its opposition, the adoption of the Joint Board's recommendation (at least in anything resembling its current form) is unlikely.

Second, Mr. Watkins ignores the various safeguards and ILEC protection mechanisms that have been proposed and that are almost certain to accompany any primary line restriction. It is possible that ILECs will continue to receive a relatively constant level of funding, at least for some period of time.

Third, Mr. Watkins jumps to the conclusion that the loss of any amount of federal USF will have catastrophic financial consequences for the ILECs, but offers no financial or other data to support this assumption. For ILECs, the loss of even a significant amount of their current USF receipts is unlikely to put them into an unprofitable position.

Fourth, Mr. Watkins completely ignores the fact that ILECs will have their fate in their own hands. If an ILEC can offer a quality service that meets the needs of its customers at competitive prices, those customers will designate the ILEC as their primary carrier and the ILEC will receive the federal USF for that line. If the customer prefers the service offered by a different carrier – because the service is offered at lower cost, a higher level of quality, with better customer service, or with an additional capability not offered by the ILEC – then the CETC will receive the available federal USF. If it turns out that the area can only support one carrier, customers will have chosen the carrier that they prefer.

Mr. Watkins' Argument That Nextel Partners Should Not Be Designated As An ETC Because It Is Not Already Providing Service In Rural Areas Is Based On A Misunderstanding Of The Federal USF Mechanism

Q: MR. WATKINS ARGUES THAT NEXTEL PARTNERS' REQUEST FOR ETC DESIGNATION SHOULD BE DENIED BECAUSE NEXTEL PARTNERS IS NOT PROVIDING SERVICE IN THE RURAL ILEC AREAS IN QUESTION. DO YOU AGREE WITH HIS OBSERVATION AND CONCLUSION?

A: No. Mr. Watkins discusses (pp. 6-7) Nextel Partners' current network configuration and what he claims to have been Nextel Partners' deployment strategy to date. His conclusions do not follow for several reasons.

Mr. Watkins first takes issue with Nextel Partners' buildout strategy and suggests that Nextel Partners invested in the more densely populated areas (or areas of more dense potential usage) of its license area first, before building out into less dense areas. Of course they did; any other entry strategy would be irrational and financially irresponsible. What Mr. Watkins fails to mention that the ILECs built out their networks, over time, in exactly the same way: they began with construction where the most people were, and expanded outward from that point. The key distinction between ILEC network expansion and Nextel Partners' buildout to date is that the ILECs made their investments while receiving USF support (either implicitly or explicitly).

Nextel Partners now seeks to expand its geographic coverage and reinforce its service quality in order to bring service to people in rural areas that is comparable to service available to people in urban areas. This is the investment that is made possible, whether the carrier is an IETC or CETC, through USF support.

Mr. Watkins next takes issue with what he believes Nextel Partners' current levels of service quality and availability to customers in the remote areas of the ILEC service territories are. He discusses the current location of Nextel Partners towers, the location of rural customers in relation to these towers, and presumably (based on his analysis) the service they can expect to receive. Of course, the fact that customers in some rural areas are not currently able to utilize quality wireless service is a compelling reason that Nextel Partners' petition *is* in the public interest. Mr. Watkins would have a stronger argument if he had shown that customers in all parts of the ILEC study areas could receive high quality wireless service today; this would raise some question about the need for funding and the incremental benefits to be derived from additional investment. Of course, such a demonstration would also compel are more fundamental question: if a carrier can provide quality service to all customers in the area without USF support, why is it in the public interest to continue to support the incumbent, when it is a demonstrably less efficient provider?

Q: WHAT DID THE FCC CONCLUDE REGARDING A REQUIREMENT THAT A CARRIER SERVE 100% OF THE AREA IN QUESTION BEFORE BEING DESIGNATED AS AN ETC?

A: Mr. Watkins states (p. 9) that "as part of a preliminary review of the ETC application of Nextel Partners, the Commission should, as a threshold matter, determine whether Nextel Partners ... (has) the ability to offer service throughout the entire service area of each of the four Cooperatives, particularly since the facts indicate that Nextel Partners does not." Mr. Watkins is directly at odds with the FCC's conclusions on this issue. The FCC has been consistent that "a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC."[20] To require otherwise would be equivalent to the old adage that in order to get a loan, you must first demonstrate to the bank that you don't need it. If USF support is not and was not needed in order for a carrier – whether an IETC or a CETC – to completely build out an area, then no carrier (including the ILEC) should receive support for that area. It is the fact that such support is needed for a complete network buildout that makes the designation of CETCs in the public interest.

[20] *Id.*, paragraph 23.

Q: IS THERE A MORE FUNDAMENTAL REASON WHY MR. WATKINS' OBSERVATIONS ABOUT THE AMOUNT OF THE ILEC SERVICE AREAS CURRENTLY SERVED BY NEXTEL PARTNERS IS JUST NONSENSE?

A: Yes. If "serve" is defined as the ability to provide telecommunications service to a customer with minimal buildout of network facilities, then the area actually being "served" by the ILECs include only the portions of the total service area over which wires have been strung. Such "service" as the ILEC offers is only a small percentage of the area in question. If "serve" is more narrowly defined as the ability to provide telecommunications service to a customer without the construction of any new network facilities, i.e. those locations over which over which wires have been strung and at which a drop wire has been installed so that the customer can physically attach his or her telephone to the network, then the area of ILEC "service" is truly miniscule in comparison to the service area of any wireless carrier. Clearly, the potential for a wireless carrier to serve the entire ILEC service area far exceeds that of the wireline ILEC. A concern that Nextel Partners only serves some portion, 50% for example, of any given study area, is disingenuous considering ITG members likely "serve" between 1% and 5% of the actual wire center area.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

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RECEIVED

MAY 1 4 2004

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	)	
PETITION OF NPCR, INC. d/b/a NEXTEL PARTNERS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY	)	CASE NO. 2003-00143

REBUTTAL TESTIMONY OF SCOTT PEABODY

FOR NPCR, INC. d/b/a NEXTEL PARTNERS

Order"). In our experience, this is appropriate. Consumers benefit by having the opportunity to choose plans that best suit their needs, and in almost all cases would prefer not to be forced to pay for 40,000 minutes of usage a month.

Q: How do you respond to Mr. Watkins' assertion that principles of service quality require a wireless ETC to be subject to state service quality rules? (Watkins, p. 10.)

A: I disagree strenuously. It is my understanding that incumbent carriers are subject to service quality regulation because they historically have been monopoly service providers. Nextel Partners is a relatively new entrant in the highly-competitive wireless market. In order to gain and maintain customers, we have had to place a high priority on providing top quality customer service. The most recent J.D. Powers survey assigns Nextel Partners its highest rating for network quality and customer satisfaction. The wireless industry recently began offering local number portability, which in most cases resulted in churn levels increasing significantly. Our churn level – i.e., customer turnover – has remained very low, and has actually recently gone down. *See* **Peabody Ex. 12, p.78.** This, again, validates our belief that in this highly-competitive market, Nextel Partners is providing tremendous quality and value to our customers.

As an example, Mr. Watkins questions our call completion levels. Watkins, p. 12. We engineer our network so that call completion rates exceed 99%. We do this because we need to provide great service to survive, not because regulators are forcing us to do so.

Q: Have other states agreed that Nextel Partners need not be subject to state service quality rules?

A: Yes. State commissions in Wisconsin, Iowa, Arkansas, Mississippi and Indiana have recognized that ILEC service quality rules don't apply to Nextel Partners' services, and have found no factual or legal reason to unilaterally apply those rules to our service.

Q: MR. WATKINS QUESTIONS WHETHER NEXTEL PARTNERS WILL OFFER LIFELINE SERVICE. (WATKINS, P. 11.) CAN YOU RESPOND?

A: I believe Mr. Watkins' testimony is that Nextel Partners will not provide Lifeline service in a manner that is identical to the way that regulated landline carriers provide that service. I want to be extremely clear. Nextel Partners participates in the federal Lifeline Program in several states, and complies with all of the rules enacted by the FCC. Nextel Partners will make available the federally-authorized discounts as required by federal law, as well as any applicable state or matching discounts. Nextel Partners is committed to providing Lifeline service to low-income consumers as part of its commitment to being a provider of universal services. I would also note that if Lifeline customers see more value in the ILEC's service, they will take the ILEC's service, providing the ILEC with both low income and high cost support. I do not see any harm in providing customers the ability to choose an alternate Lifeline plan if low-income consumers decide such a plan best meets their needs.

Q: MR. WATKINS DOES NOT SEEM TO THINK THAT COMPETITION IN AND OF ITSELF SERVES THE PUBLIC INTEREST. (WATKINS, P. 13.) IS NEXTEL PARTNERS RELYING ON MORE THAN SIMPLY ABSTRACT NOTIONS OF COMPETITION?

A: Absolutely. First, however, Nextel Partners is firmly convinced that there are benefits of developing competitive markets, especially in underserved rural areas. Those are benefit that were recognized by Congress and the FCC, and are discussed in more detail by Mr. Wood. Second, as I described in my direct testimony, Nextel Partners has made additional and specific commitments comparable to those made by Virginia Cellular and accepted by the FCC as serving the public interest. Mr. Watkins did not address those issues, and has failed to explain how such commitments could serve the public interest in the *Virginia Cellular* and *Highland Cellular* cases, but not in this case.

Mr. Watkins also fails to address the fact that Nextel Partners can provide choices that landline carriers cannot provide, such as mobility, large local calling areas, push-to-talk service, wireless data services, and GPS location. This customer choice is what competitive universal service should foster.

Q: IS NEXTEL PARTNERS COMMITTED TO THE STATE OF KENTUCKY?

A: Absolutely. Nextel Partners holds licenses to provide service throughout the state. Unlike the ILECs, which have had many decades in which to expand their networks, Nextel Partners has been providing service for only a few years. In this short period of time, we have invested over $65 million and established substantial network facilities that serve our Kentucky customer base. Over time we expect to continue this build out and anticipate providing full coverage throughout the state where people live, work and travel.

Q: WILL UNIVERSAL SERVICE DOLLARS ENABLE NEXTEL PARTNERS TO FACILITATE THIS NETWORK DEVELOPMENT?

A: Yes. As Nextel Partners determines how to deploy network facilities, the ability to obtain universal service funds for new and existing customers will affect our investment decisions. In other states, our expected network deployment expenditures far outweigh any universal service support which will be received. I have attached as **Peabody Exhibit No. 11** our filing with the Indiana Commission after being designated as an ETC. Based on this filing, the Commission certified our use of funds in that state under Section 254 of the Act. As indicated on that filing, Nextel Partners anticipated making capital investments of $400,000 within the state during 2004, compared to a receipt of universal funds in the amount of $97,000. We would expect to file a similar certification in the state of Kentucky, and we anticipate making capital investments greater than the amount of universal service support we would receive.

Q: MR. WATKINS SUGGESTS IT MAY BE A WASTE OF MONEY TO FUND A SECOND PROVIDER IN RURAL AREAS. (WATKINS, PP. 12-13.) DO YOU AGREE?

A: No, although Mr. Wood is better equipped to address this general concept than I. I would like to point out, however, that Nextel Partners is a provider of wireless services in rural markets, and is very proud of the efficiencies it has achieved in rapidly building out its network. For example, **Peabody Exhibit No. 12** shows per customer investment numbers for larger wireless carriers.[1] Although Nextel Partners is not one of the biggest providers, and has service territories that tend to be more rural, it has spent less to "per covered pops" than its competitors. **Peabody Exhibit No. 12, p. 62**. A "pop" stands for "population," and so "covered pops" means the number if persons covered by network facilities. Nextel Partners has accomplished this while being at the top of the industry in customer satisfaction and retention. This efficiency means that universal service dollars provided to Nextel Partners will turn into more value for consumers than might be the case for other carriers. Moreover, our company has a core commitment to bringing rural consumers advanced wireless services at the rates, terms and conditions that are provided in urban markets. Mr. Watkins' suggestion that rural consumers don't deserve this or don't need this seems to me to be an attempt to protect his clients rather than to benefit consumers.

Q: CAN YOU ADDRESS MR. WATKINS' QUESTIONS REGARDING NEXTEL PARTNERS' ABILITY TO SERVE THROUGHOUT THE FOUR RURAL STUDY AREAS?

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[1] **Peabody Exhibit No. 12** contains pages from Legg Mason Wood Walker, Inc.'s "3Q 2003 Wireless Industry Scorecard."

A: I have again reviewed the maps attached to my direct testimony. Nextel Partners provides service today throughout a great deal of these areas and commits to expanding its network over time to provide service in all areas. In 2004 Nextel Partners has already completed construction of one site that serves customers in the South Central Rural Telephone Cooperative Corporation study area. We have preliminary plans to build an additional 3 sites in the South Central study area in 2005-2006. In addition, in 2004 we will construct over 30 sites in non-rural company high cost areas, some of which will also serve rural company areas. At over $200,000 per site, this represents continued commitment to expand our network to serve high-cost customers in Kentucky.

Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A: Yes.

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PEABODY EXHIBIT NO. 11

FILED

MAR 25 2004

INDIANA UTILITY REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS BY THE INDIANA UTILITY REGULATORY COMMISSION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 AND RELATED FCC ORDERS, AND IN PARTICULAR, THE APPLICATION OF NPCR, INC. d/b/a NEXTEL PARTNERS TO BE DESIGNATED.	)	CAUSE NO. 41052 ETC 43

FILING OF HIGH COST UNIVERSAL SERVICE FUNDING CERTIFICATION

Comes now, NPCR, Inc. d/b/a Nextel Partners, by counsel, Alan M. Hux, and files its High Cost Universal Service Funding Certification for All Eligible Rural Telecommunications Carriers.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

Alan M. Hux, #7947-49
KORTEPETER MCPHERSON HUX FREIHOFER & MINTON
320 N. Meridian Street, Suite 500
Indianapolis, Indiana 46204
Telephone: (317) 639-4611
Facsimile: (317) 637-7106

PEABODY
EXHIBIT 11

Attachment B

(Revised 6/18/03)

High Cost Universal Service Funding Certification For All Eligible Rural Telecommunications Carriers IURC Cause No. 42067

Each rural carrier is required to complete this form in order to receive certification by the Indiana Utility Regulatory Commission that the carrier is eligible to receive federal high-cost loop support. If a particular question does not apply, simply mark it "N/A." If you need to attach additional sheets, please do so. If you have any questions, please call the Telecommunications Division at 317-232-2785.

Carrier Name: NPCR, Inc. d/b/a Nextel Partners

Study Area Code 329008

IURC Cause No.: **42067-HLS-**_______

Carrier Address: 4500 Carillon Point

Kirkland, WA 98033

Contact Name: Boyd Daniels

Contact Email: boyd.daniels@nextelpartners.com

Position: Tax Manager

Phone: (425) 576-3684 **FAX:** (425) 238-7494

1. **With regard to your Study Area[1] please provide the following information, using the most current year-end financial statements (preferably audited):**

Federal Loop Support:	$ 0
Federal Switching Support:	$ 0
Federal Interstate Common Line Support:	$ 0
Total Federal Support[2]:	$ 0
Total SLC Revenues:	$ 0
Total Common Line Costs	$ 0

2. **Do you expect the amount of Federal Universal Service funding you will receive in the coming year to change by a significant amount from prior years? If yes, please estimate how much more or less you will be receiving, and explain the reason for the change (if you know).**

Yes, 2004 is the first year of ETC designation in the state of Indiana. USAC projections for support in the second quarter of 2004 are $11,966 per month, consisting of HCL, SNA, IAS, LTS, LSS and ICLS.

3. **Explain how your company plans to use federal universal service funds it will receive in the coming calendar year. Indicate below how those funds will be applied to provision, maintain, and upgrade eligible facilities and services.**

Provision:	$ 413,000	network expansion in designated areas
Maintenance:	$ 0	
Upgrade:	$ 0	
Total:	$ 413,000	

[1] Study area refers to the geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms according to § 214(e)(5).
[2] To calculate Total Federal Support, add the values from loop, switching and ICLS support.

Please describe any upgrade projects that are being funded with federal universal service funds:

New Sites:		
Scottsburg	$133,300	Expand Coverage
Incremental switch capital for Scottsburg	$ 7,465	
Riley	$146,612	Expand Coverage
Incremental switch capital for Riley	$ 467	
Site Modifications:		
Greencastle	$ 18,265	TTA – Expand Coverage
Paxton	$ 41,099	Antenna Change – Expand Coverage
Allendale	$ 66,026	Sectorize site – expand coverage
	$413,234	

4. Describe the level of access to advanced services presently available to your customers[3]. Information can include but is not limited to digitized central offices, packet switching, DSLAM equipment, and high-speed asymmetric DSL lines.

Nextel services do not provide data rates fast enough to be characterized as advanced services.

5. What future infrastructure investments, if any, are planned to enhance customer access to advanced services?

N/A

[3] *In the Matter of Federal-State Board on Universal Service and the MAG Plan*, Fourteenth Report and Order, CC Docket Nos. 96-45 and 00-256 at Paragraphs 200-201. The FCC Order appears to encourage the use of federal high-cost loop support for the deployment of equipment capable of providing *access* to advanced services.

6. Please identify any competitive eligible telecommunications communications carriers operating in your study area, and if you are receiving access revenue from them, how much.

$0

7. Do you have any Special Access surcharge revenues? If so, please identify the annual amount of revenue received for the reporting period.

NPCR, Inc. d/b/a Nextel Partners, Inc. does not have access revenues.

PEABODY EXHIBIT NO. 12

The Wireless Industry Scorecard

Contents

As wireless carriers focus more on cash flow rather than subscriber growth, we believe they increasingly will be measured by their operating results. To help investors evaluate carriers' operational performance, we have developed a "Scorecard" to highlight the key operating and financial metrics for the U.S. wireless industry. The Scorecard covers 18 publicly traded wireless companies and contains 47 metrics, which fall into one of four categories: subscribers, revenue, cash flow, and capital expenditures. Importantly, all of the metrics that measure sequential and year-over-year growth (e.g., subscriber growth, market share growth, penetration growth, revenue growth and EBITDA growth) have been normalized for acquisitions, dispositions, and property swaps, which allows for an apples-to-apples comparison of the data. All other metrics that do not measure growth (e.g., market share, penetration, EBITDA) are inclusive of all reported results. Our survey represents 93% of U.S. wireless subscribers, with the remaining 7% coming from privately held wireless companies and public carriers that do not break out wireless metrics. We use the Cellular Telecommunications and Internet Association (CTIA) data to estimate the size of the entire industry and the share of subscribers accounted for by the companies not in the Scorecard. As usual, we have designed a cover for the Scorecard that reflects the trials and tribulations of the wireless industry. For 3Q 2003, we have chosen to highlight Football, the WLNP Bowl. Given all of the publicity surrounding WLNP, consumers are keenly aware of the opportunity and are moving to take advantage of it. Employing a similar strategy witnessed in Football, the offensive line (FCC and Consumer groups) needs to block (protect) for the consumer to enable him or her to score a touchdown (port successfully). However, the ferocious defense (wireless carriers) are trying to protect its profitability through attractive retention offers including free handsets and cash for service credits. Who will win this WLNP battle? Anecdotally, the demand for porting has been tepid to date, and we believe that a combination of contract expirations and focus on customer retention will mitigate the impact by spreading it evenly throughout 2004.

Wireless Categories

For comparison purposes, we segment the wireless industry into three distinct categories: Big 6 Wireless Carriers, Affiliates and Other PCS Carriers, and Independent Cellular Carriers. We have chosen these categories to distinguish between nationwide and regional carriers, with the latter being further segmented between those carriers that are affiliated with the Big 6 and those that are independent. For all metrics in the Scorecard, we show results in total and by wireless industry category. As companies consolidate and change operational characteristics, we will adjust our Scorecard to reflect the most current landscape.

Metrics

Because of different stages of maturity, certain carriers will have advantages in specific metrics. For example, it is not relevant to compare the subscriber growth rate increase of Verizon Wireless, which has 36.0 million subscribers, to that of Nextel Partners, which has about 1.2 million subscribers and should continue to grow its subscriber base at a much faster rate. In return, it would not be relevant to compare the two companies on percentage of net adds generated during the quarter, as Verizon Wireless is a national carrier and Nextel Partners is not.

Sources of Data

We have gathered data from company press releases, SEC filings, Web sites, conference calls, and discussions with the companies. For metrics that are not reported, we have established estimates based on the wireless industry category and company specifics.

All relevant disclosures and certifications appear on pages 90 and 91 of this report.

PEABODY
EXHIBIT 12

CAPEX PER NET ADD AND CAPITAL PAYBACK

In **Exhibit 24,** we detail carriers' incremental capital expenditures per net add and capital payback. Capex per net add isolates the capital expenditures for the quarter versus the associated net additions that are generated from that capital investment. Capital payback details the time period in months that it will take carriers to generate sufficient revenue to cover capital expenditures. Industry capex per net add increased in 3Q03 to $1,723, as capital expenditures are generally backloaded into the 2H of the year and carriers demonstrated a noticeable pickup in capital investment during the quarter. While most of the 2.5G capital expenditures already have been invested, we are not of the opinion that capex per net add will decline substantially as high penetration leaves minimal room for new net add growth, unless the industry devises a strategy of profitably penetrating the third quartile. Additionally, companies that underinvest in their networks will suffer negative ramifications from number portability as, in our view, there will be a flight to quality, specifically to network performance. Carriers are more focused than ever on customer retention, evidenced by low churn, so growth through churned subscribers could continue to slow during portability as carriers are offering their most valuable customers attractive retention promotions. Couple that with companies continually striving to improve network quality and we believe that capex per net add could trend up slightly over the next few quarters on a year-over-year basis normalizing for seasonality. Capital payback of 31.1 months increased from 21.7 months in 2Q03 due entirely to the increase in capex, which offset the sequential rise in ARPU.

Exhibit 24

Total Industry

Capex per Net Add

Company	Capex per Net Add
UbiquiTel	$424
Nextel Partners	$445
T-Mobile	$607
Nextel	$624
Verizon Wireless	$699
Alamosa PCS	$838
Cingular Wireless	$1,038
Western Wireless	$1,797
U.S. Cellular	$2,047
Sprint PCS	$2,668
U.S. Unwired	$3,071
Alltel	$3,436
Dobson	$3,948
AT&T Wireless	$4,118
Triton PCS	$5,214
Centennial	$6,468
Airgate PCS	NR
Qwest *	NR
** Weighted Capex per Net Add in Survey	$1,723

Capital Payback (Mos)

Company	Capital Payback (Mos)
Nextel Partners	6.4
UbiquiTel	7.3
Nextel	8.8
T-Mobile	11.2
Verizon Wireless	14.0
Alamosa PCS	14.7
Cingular Wireless	20.4
Western Wireless	37.9
Sprint PCS	42.4
U.S. Cellular	46.1
U.S. Unwired	55.6
AT&T Wireless	67.3
Alltel	70.0
Dobson	90.7
Triton PCS	92.1
Centennial	137.6
Airgate PCS	NR
Qwest *	NR
** Weighted Payback in Survey	31.1

** Did not report capital expenditures.*

***Capex per net add and payback are weighted on market share.*

NR - denotes negative net additions during quarter.

CUM. CAPEX PER COV. POP AND CAPEX % TOTAL REV.

In **Exhibit 25,** we detail cumulative capital expenditures per covered POP and capex as a percentage of total revenue. Capex per covered POP highlights a carrier's capital efficiency in deploying its network, while capex as a percent of revenue illustrates that service provider's ability to cover its capex. As of the end of 3Q03, T-Mobile remained the most capital-efficient Big 6 operator, spending only $34 per covered POP to build and maintain its network, which is 2x less than the next Big 6 carrier, Nextel, which came in at $69 per covered POP. On the surface it appears that the Affiliates and Other PCS carriers seem to be prudently allocating capital, as five of the top-10 wireless carriers are from this group, which boasts median capex per covered POP of just $52 versus $108 and $115 for the Big 6 carriers and Independent Cellular carriers, respectively. Conversely, our view is that a subset of the Affiliate segment has to cut its capital spending to maintain a prudent liquidity position as it is saddled with financial difficulties. There is not much variability among the segments as Affiliates and Other PCS Carriers reported a weighted capex percentage of revenue of 18% versus 9% and 18% for the Big 6 Carriers and Independent Cellular operators, respectively. Historically, telecommunication service provider's capital investment has hovered around the midteens percentage of revenue.

Exhibit 25

Total Industry

Cum. Capex/Covered POP

Company	Capex per Cov Pop
T-Mobile	$34
U.S. Cellular	$45
Nextel Partners	$45
Airgate PCS	$50
Alamosa PCS	$51
UbiquiTel	$53
Nextel	$69
Dobson	$90
Triton PCS	$92
Sprint PCS	$108
Alltel	$115
AT&T Wireless	$115
Cingular Wireless	$119
U.S. Unwired	$119
Verizon Wireless	$132
Western Wireless	$281
Centennial	$310
Qwest *	NR
Median	$92

Capex % of Total Revenue

Company	Capex % of Total Revenue
U.S. Unwired	6%
UbiquiTel	8%
Airgate PCS	8%
Alamosa PCS	8%
Triton PCS	9%
Qwest *	10%
Nextel	14%
Nextel Partners	14%
Western Wireless	14%
Sprint PCS	15%
Alltel	16%
Verizon Wireless	17%
Centennial	17%
T-Mobile	18%
Cingular Wireless	20%
U.S. Cellular	21%
AT&T Wireless	22%
Dobson	22%
Total	17%

** Did not report capital expenditures.*

***Capex per net add and payback are weighted on total revenue basis.*

Appendix Continued

Company	Churn								
	3Q01	4Q01	1Q02	2Q02	3Q02	4Q02	1Q03	2Q03	3Q03
Airgate PCS	2.8%	3.0%	3.0%	3.0%	3.3%	3.5%	3.7%	2.9%	3.4%
Alamosa PCS	2.7%	3.3%	3.1%	3.2%	3.8%	3.4%	3.0%	2.5%	2.9%
Alltel	2.4%	2.4%	2.3%	2.2%	2.2%	2.8%	2.7%	2.5%	2.8%
AT&T Wireless	3.1%	2.7%	2.6%	2.4%	2.9%	2.4%	2.3%	2.2%	2.7%
Centennial	2.7%	2.3%	2.2%	1.8%	2.4%	2.5%	2.5%	1.7%	2.3%
Cingular Wireless	**3.0%**	3.1%	2.9%	2.7%	3.0%	2.7%	2.6%	2.5%	2.8%
Dobson	1.8%	2.1%	2.3%	1.7%	2.0%	1.8%	1.6%	1.6%	1.8%
Nextel	2.1%	2.2%	2.1%	2.1%	2.0%	2.1%	1.9%	1.6%	1.4%
Nextel Partners	1.6%	1.6%	1.6%	1.6%	1.6%	1.6%	1.7%	1.6%	1.5%
Qwest	**3.0%**	**3.0%**	**3.0%**	**3.0%**	**4.3%**	**4.3%**	**4.3%**	**3.0%**	**3.0%**
Sprint PCS	2.6%	3.0%	3.0%	2.9%	3.8%	3.5%	3.1%	2.4%	2.7%
T-Mobile	5.1%	4.8%	4.4%	4.4%	4.2%	3.5%	3.0%	3.0%	3.3%
Triton PCS	2.0%	2.0%	1.9%	2.0%	2.2%	2.5%	2.1%	2.1%	2.5%
UbiquiTel	2.9%	3.9%	4.3%	4.1%	4.3%	3.9%	3.4%	2.9%	3.4%
U.S. Cellular	2.1%	1.9%	1.9%	1.7%	2.0%	2.1%	1.9%	1.7%	1.8%
U.S. Unwired	3.4%	2.5%	3.4%	3.4%	4.7%	4.2%	3.6%	2.7%	3.5%
Verizon Wireless	2.2%	2.7%	2.6%	2.3%	2.3%	2.1%	2.1%	1.7%	1.9%
Western Wireless	2.5%	2.3%	2.6%	2.4%	2.5%	2.2%	2.0%	2.4%	2.4%
**** Weighted Churn in Survey**	2.7%	2.8%	2.7%	2.6%	2.8%	2.6%	2.5%	2.2%	2.4%

**Churn numbers in bold indicate Legg Mason estimates.*

***Churn is weighted on market share.*

Source: Company press releases, SEC filings, Web sites, and company conference calls.